

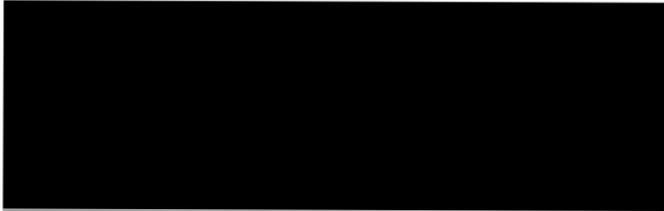
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U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: DEC 09 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated January 30, 2006.

On appeal, the applicant's wife expresses that she will experience significant emotional hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Wife*, dated February 24, 2006.

The record contains statements from the applicant's wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present matter, the record reflects that the applicant entered the United States without inspection from Mexico in approximately May 2000. He stated that he remained until April 2005. Accordingly, he accrued approximately five years of unlawful presence. He now seeks reentry to the United States as an immigrant pursuant to an approved Form I-130 filed by his wife on his behalf. The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212 of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant's wife expresses that she will experience significant emotional hardship should the applicant be prohibited from entering the United States. *Statement from Applicant's Wife*, dated February 24, 2006. She states that she and the applicant need each other, as they share a close relationship. *Id.* at 1. She explains that she and the applicant wish to have children, and that she would be unable to obtain fertility treatments in Mexico. *Id.* The applicant's wife stated that she works in the United States, and she pays for the rent, car insurance, utility bills, and she sends funds to the applicant in Mexico. *Prior Statement from Applicant's Wife*, dated October 24, 2005.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. The applicant has not provided adequate documentation to show that his wife will experience extreme hardship if he is prohibited from returning to the United States. The applicant's wife explained that she is experiencing emotional consequences as a result of being separated from the applicant. However, the applicant has not established that his wife will experience emotional effects or consequences that are greater than those ordinarily expected of the close family members of those prohibited from entering the United States. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected

upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure emotional hardship as a result of separation from the applicant should she remain in the United States without him, yet the record does not distinguish her situation from the common effects experienced by the family members of those deemed inadmissible.

The applicant's wife indicated that she and the applicant wish to have children, and that she would be unable to obtain fertility treatments in Mexico. However, the applicant has not submitted any documentation to show that his wife requires fertility treatment or that she has been examined by a physician regarding fertility. Nor has the applicant submitted any documentation to show that his wife would be unable to receive fertility treatments in Mexico.

It is noted that the applicant has not shown that his wife depends on him for economic support. The applicant's wife stated that she works and pays for her expenses in the United States, as well as sends funds to the applicant in Mexico. Accordingly, the record reflects that she is able to meet her financial needs without the applicant. The applicant has not asserted that his wife would be unable to secure employment in Mexico should she relocate there, thus he has not shown that she would experience significant economic hardship should she join him abroad.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his wife should the applicant be prohibited from entering the United States, considered in aggregate, rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.